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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,670	03/16/2004	Paul Vincent	Q80358	3012
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SUGHRUE MION, PLLC				
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800				
WASHINGTON, DC 20037				
EXAMINER				
NALVEN, ANDREW L				
ART UNIT		PAPER NUMBER		
2434				
MAIL DATE		DELIVERY MODE		
12/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,670

Applicant(s)

VINCENT ET AL.

Examiner

ANDREW L. NALVEN

Art Unit

2434

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 October 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) 6-12 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-12 are pending. Claims 6-12 are withdrawn from consideration.

Response to Arguments

2. Applicant has argued that Kuzma fails to teach a multimedia message service environment comprising a multimedia message service center. Examiner respectfully disagrees. Kuzma teaches a multimedia message center in the form of an electronic post office verifying the payment stamp on a multimedia message (Kuzma, column 2 lines 26-52). Examiner further provided the MTM reference to further teach a multimedia message service environment comprising a multimedia message service center (MTN, MMS Center). Thus, Examiner contends that Kuzma and MTM teach the multimedia server environment with multimedia message service center. Kuzma teaches the use of an electronic stamp whose validity is verified by said multimedia message service center wherein said electronic stamp is an element associated with paying for sending the message and includes a value of the stamp (Kuzma, column 4 lines 35-45, stamp is placed on message with an appropriate value, column 5 lines 57-65, post office checks validity of stamp). Thus, the combination of references teach all of the limitations of the claims.
3. Applicant's remaining arguments directed to the 101 rejection are unpersuasive. Applicant asserts that claims 1-5 are statutory because the claims are directed to a

method. Examiner notes that the claims as currently presented provide wherein clauses without clearly claiming method steps. The limitations of the claims are directed to the structural format of a message. The only portion of the claims that could be construed as a method step is found in the preamble. Thus, Examiner maintains that the claims are not directed to a method. As a result, the claims can be interpreted as purely software per se and thus the claims fail to fall into one of the four statutory classes of invention because a manufacture cannot be software per se. Assuming *arguendo* that Applicant is correct that the claims are directed to a method, the claims still fail the requirements of 101 in view of *In re Bilski* because the claims do not meet the machine or transformation test. *In re Bilski* (Fed. Cir. 2008) (en banc).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter because the cited claims fail to fall into one of the four statutory classes of invention. The cited claims can be interpreted as purely software per se and thus the cited claims fail to fall into the statutory class of an article of manufacture.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-5 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Kuzma US Patent No. 5,771,289 in view of Mobile Tech News "Logica first to enable MMS intercarrier messaging." (hereafter MTN)
6. **With regards to claim 1**, Kuzma teaches a multimedia message service consisting in sending a message in a multimedia message service environment (Kuzma, column 2 lines 26-30) comprising a multimedia message service center (Kuzma, column 2 lines 40-52), wherein a sent multimedia messaging service message includes an electronic stamp whose validity is verified by said multimedia message service center wherein said electronic stamp is an element associated with paying for sending the message and includes a value of the stamp (Kuzma, column 4 lines 35-45, stamp is placed on message with an appropriate value, column 5 lines 57-65, post office checks validity of stamp). Kuzma fails to teach the multimedia messaging service being a mobile Multimedia Messaging Service Center. However, MTN teaches the use of Multimedia Messaging Service messages in a Multimedia Messaging Service environment using a Multimedia Messaging Service Center (MTN, MMS Center). At the time the invention was made, it would have been obvious to a person of ordinary skill in

the art to utilize MTN's MMS environment and center design with Kuzma's payment system for messaging because it offers the advantage of allowing the sending of messages between users of different networks and increase revenue for mobile operators (MTN, pages 1-2).

7. **With regards to claim 2**, Kuzma as modified teaches a header containing parameters relating to the transportation and the content of said message and a body containing elements of said message (Kuzma column 4 lines 5-20, electronic mail messages include a header with addressee information and a message body) and one parameter in said header is a field corresponding to the stamping of the message (Kuzma, column 5 lines 48-57, affixed to header).
8. **With regards to claim 3**, Kuzma as modified teaches the value associated with said stamping field in said header is an encrypted numerical value (Kuzma, column 5 lines 35-40, encoded electronic stamp).
9. **With regards to claim 4**, Kuzma as modified teaches the value associated with said stamping field in said header is a binary value indicating the presence of said electronic stamp in said message body (Kuzma, column 5 lines 47-57).
10. **With regards to claim 5**, Kuzma as modified teaches a body part of said message body contains said electronic stamp in the form of an encrypted numerical value (Kuzma, column 4 lines 35-45, stamp is placed on message with an appropriate value).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW L. NALVEN whose telephone number is (571)272-3839. The examiner can normally be reached on Monday - Thursday 8-6, Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on 571 272 3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2434

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew L Nalven/
Primary Examiner, Art Unit 2434